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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. OT2004-127

12 BENIGNO OLARTE
a.k.a. BENIGNO JARABATO OLARTE
13 a.k.a., PETER LUCERO
a.k.a., BENIGNO JARBATA OLARTE
14 a.k.a., BENIGNO JARBATA CLARTE
2561 Saturn Avenue
15 Huntington Park, CA 90255

A C C U S A T I O N

16 Occupational Therapy License No. OT 2883

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Heather Martin (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the Board of Occupational Therapy (Board), Department of
23 Consumer Affairs.

24 2. On or about November 5, 2002, the Board issued Occupational Therapy
25 License No. OT 2883 to Benigno Olarte, also known as Benigno Jarabato Olarte, Peter Lucero,
26 Benigno Jarbata Olarte, and Benigno Jarbata Clarte (Respondent). The Occupational Therapy
27 License expired on November 30, 2005, for failure to submit a complete renewal application:
28 There was a lapse in licensure from December 1, 2005 until July 20, 2006 when the license was

1 renewed, and will now expire on November 30, 2006.

2 **JURISDICTION**

3 3. This Accusation is brought before the Board, under the authority of the
4 following laws. All section references are to the Business and Professions Code unless otherwise
5 indicated.

6 4. Section 2570.28 states:

7 "The board may deny or discipline a licensee for any of the following:

8 "(a) Unprofessional conduct, including, but not limited to, the following:

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10 "(c) Violating or attempting to violate, directly or indirectly, or assisting in or
11 abetting the violation of, or conspiring to violate, any provision or term of this chapter or any
12 regulation adopted pursuant to this chapter.

13

14 "(e) Conviction of a crime or of any offense substantially related to the
15 qualifications, functions, or duties of a licensee, in which event the record of the conviction shall
16 be conclusive evidence thereof."

17 5. Section 2570.27 states:

18 "(a) The board may discipline a licensee by any or a combination of the following
19 methods:

20 "(1) Placing the license on probation with terms and conditions.

21 "(2) Suspending the license and the right to practice occupational therapy for a
22 period not to exceed one year.

23 "(3) Revoking the license.

24 "(4) Suspending or staying the disciplinary order, or portions of it, with or without
25 conditions.

26 "(5) Taking other action as the board, in its discretion, deems proper.

27 "(b) The board may issue an initial license on probation, with specific terms and
28 conditions, to any applicant who has violated any provision of this chapter or the regulations

1 adopted pursuant to it, but who has met all other requirements for licensure."

2 6. Section 2570.29 states:

3 "In addition to other acts constituting unprofessional conduct within the meaning
4 of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of
5 the following:

6 "(a) Obtain or possess in violation of law, or prescribe, or, except as directed by a
7 licensed physician and surgeon, dentist, optometrist, or podiatrist, to administer to himself or
8 herself, or furnish or administer to another, any controlled substance as defined in Division 10
9 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or
10 dangerous device as defined in Section 4022.

11 "(b) Use to an extent or in a manner dangerous or injurious to himself or herself,
12 to any other person, or to the public, or that impairs his or her ability to conduct with safety to the
13 public the practice authorized by his or her license, of any of the following:

14 "(1) A controlled substance as defined in Division 10 (commencing with Section
15 11000) of the Health and Safety Code.

16 "(2) A dangerous drug or dangerous device as defined in Section 4022.

17 "(c) Be convicted of a criminal offense involving the prescription, consumption,
18 or self-administration of any of the substances described in subdivisions (a) and (b) of this
19 section, or the possession of, or falsification of a record pertaining to, the substances described in
20 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
21 thereof."

22 7. Section 2570.30 states:

23 "The board shall retain jurisdiction to proceed with any investigation, action or
24 disciplinary proceeding against a license, or to render a decision suspending or revoking a
25 license, regardless of the expiration, lapse, or suspension of the license by operation of law, by
26 order or decision of the board or a court of law, or by the voluntary surrender of a license by the
27 licensee."

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1 8. Section 490 states:

2 "A board may suspend or revoke a license on the ground that the licensee has been
3 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
4 of the business or profession for which the license was issued. A conviction within the meaning
5 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action which a board is permitted to take following the establishment of a
7 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
8 been affirmed on appeal, or when an order granting probation is made suspending the imposition
9 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
10 Penal Code."

11 9. California Code of Regulations, title 16, section 4170, states:

12 "A violation of any ethical standard of practice constitutes grounds for
13 disciplinary action. Every person who holds a license, certificate or limited permit issued by the
14 board shall comply with the following ethical standards of practice:

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16 "(b) Occupational therapy practitioners shall take reasonable precautions to avoid
17 imposing or inflicting harm upon the client or to his or her property.

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19 "(2) Occupational therapy practitioners shall avoid relationships or activities that
20 interfere with professional judgement and objectivity.

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22 "(e) Occupational therapy practitioners shall comply with the Occupational
23 Therapy Practice Act, the California Code of Regulations, and all other related local, state, and
24 federal laws."

25 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
26 request the administrative law judge to direct a licentiate found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

11. **CONTROLLED SUBSTANCES**

"Methamphetamine," is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2) and is categorized as a "dangerous drug" pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

12. Respondent is subject to disciplinary action under section 2570.28, subdivision (e) and 490 of the Code, as defined in section 2570.29, subdivision (c), in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of an occupational therapist, as follows:

A. On or about December 28, 2005, Respondent was convicted on a plea of guilty on one count of violating Health and Safety Code section 11377, subdivision (a), a felony (possession of a controlled substance), in the Superior Court of California, County of Los Angeles, Central Judicial District, Case No. BA283962, entitled *The People of the State of California v. Benigno Jarabato Olarte*.

B. The circumstances surrounding the conviction are that on or about May 22, 2005, Respondent unlawfully possessed a controlled substance, to wit, methamphetamine.

SECOND CAUSE FOR DISCIPLINE

(Obtaining or Possessing a Controlled Substance)

13. Respondent is subject to disciplinary action under section 2570.28, subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in section 2570.29, subdivision (a), as follows:

A. On or about December 24, 2005, during a search conducted by a police officer, Respondent was found to be in possession of a 4" cylindrical glass pipe with a burnt bulbous end. The interior of the pipe contained a white residue resembling methamphetamine. Additionally, Respondent was found to be in possession of nine (9) small zip lock baggies. Each baggie contained a crystallized substance resembling methamphetamine.

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1 B. On or about May 22, 2005, during a search conducted by a police officer,
2 Respondent was found to have in his possession, a clear plastic baggie containing a crystal
3 substance resembling methamphetamines and a glass pipe used for smoking methamphetamines,
4 as more fully set forth above in paragraph 11A and 11B.

5 **THIRD CAUSE FOR DISCIPLINE**

6 (Use of a Controlled Substance)

7 14. Respondent is subject to disciplinary action under section 2570.28,
8 subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in section
9 2570.29, subdivision (b)(1) and (2), for violating California Code of Regulations, title 16, section
10 4170, subdivision (b)(2), in that on or about May 22, 2005, during a search of Respondent, he
11 admitted to a police officer that he was smoking drugs.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct)

14 15. Respondent is subject to disciplinary action under section 2570.28,
15 subdivision (a) and (c) of the Code, on the grounds of unprofessional conduct, as defined in
16 California Code of Regulations, title 16, section 4170, subdivision (e), in that Respondent failed
17 to cooperate and/or respond to the Board's letters dated June 8, 2005, July 26, 2005, August 31,
18 2005, and December 1, 2005, regarding his May 22, 2005 arrest.

19 **PRAAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein
21 alleged, and that following the hearing, the Board issue a decision:

22 1. Revoking or suspending Occupational Therapy License No. OT 2883
23 issued to Benigno Olarte, also known as, Benigno Jarabato Olarte, Peter Lucero, Benigno Jarbata
24 Olarte, and Benigno Jarbata Clarte;


25 2. Ordering Benigno Olarte to pay the Board the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/03/06


HEATHER MARTIN
Executive Officer
Board of Occupational Therapy
State of California
Complainant

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jz (7/12/06)